

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Edwin Reeves Hazel, III,

Plaintiff,

vs.

Sgt. R. Sanders,

Defendant.

Civil Action No. 1:09-cv-2543-RMG-SVH

**ORDER**

Plaintiff filed this *pro se* civil rights action pursuant 42 U.S.C. § 1983. Plaintiff moved for a default judgment against the Defendant. (Dkt. No. 38). The Magistrate Judge recommended denying Plaintiff's motion and allowing the case to proceed on the merits. (Dkt. No. 49). Plaintiff has not objected to the R&R. As shown herein, this Court has reviewed the Record for any errors of law and agrees with the Magistrate Judge's report and adopts it as the Order of this Court.

**Discussion**

The magistrate makes only a recommendation to this Court. The recommendation has no presumptive weight, and responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71, 96 S.Ct. 549, 46 L.Ed.2d 483 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and this Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). This Court may also "receive further evidence or recommit the matter to the magistrate with instructions." *Id.*

Having reviewed the Record for any errors of law and finding none, this Court adopts the Magistrate Judge's recommendation. First, the Defendant was not properly served in accordance with Rule 5 of the Federal Rules of Civil Procedure. Moreover, even if she were properly served, the Defendant has demonstrated good cause for relief from entry of default under Rule 55 after consideration of the *Payne* factors. *See Payne ex rel. Estate of Calzada v. Brake*, 439 F.3d 198, 205 (4th Cir. 2006) ("The disposition of motions made under Rule [ ] 55(c) . . . is a matter which lies largely within the discretion of the trial judge."). Defendant has submitted an affidavit detailing the events surrounding the delay in filing an answer, which revolves around her lack of knowledge of the lawsuit due to the failure of the Sheriff's Department to forward the summons and complaint to her. Further, Defendant acted promptly and with reasonable diligence in filing her answer and opposing the motion for default immediately upon receiving notification of Plaintiff's motion. There is no indication of any prejudice to Plaintiff in allowing the action to proceed, as this case is in its early stage. Finally, Defendant has demonstrated she has meritorious defenses including failure of Plaintiff to exhaust administrative remedies and qualified immunity.

### Conclusion

Accordingly, Plaintiff's motion for default judgment is **denied** and the case will proceed on the merits.

**AND IT IS SO ORDERED.**

  
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Richard Mark Gergel  
United States District Court Judge

December 8, 2010  
Charleston, South Carolina